

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

JAN 26 2007

COURT OF APPEALS  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
Respondent,	)	2 CA-CR 2006-0159-PR
	)	DEPARTMENT B
v.	)	
	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
DANELL McALISTER,	)	Rule 111, Rules of
	)	the Supreme Court
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-35163

Honorable Richard Nichols, Judge

REVIEW GRANTED; RELIEF DENIED

\_\_\_\_\_  
Danell McAlister

Tucson  
In Propria Persona

\_\_\_\_\_  
B R A M M E R, Judge.

¶1 Danell McAlister seeks review of the trial court's denial of relief on his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S., and his subsequent motion for reconsideration. We review the court's ruling for an abuse of discretion, *see State v. Decenzo*, 199 Ariz. 355, ¶ 2, 18 P.3d 149, 150 (App. 2001), and find none.

¶2 McAlister was convicted in 1992 of three counts of sexual conduct with a minor under the age of fifteen, dangerous crimes against children, and one count of sexual conduct with a minor under the age of eighteen; his sentences total eighty-six years. This court affirmed McAlister’s convictions and sentences on appeal and later denied relief on his petition for review of his first post-conviction petition. *State v. McAlister*, No. 2 CA-CR 92-0878 (memorandum decision filed Sept. 6, 1994); *State v. McAlister*, No. 2 CA-CR 95-0007-PR (memorandum decision filed May 31, 1995). In 2001, the trial court summarily dismissed a subsequent notice of post-conviction relief after McAlister failed to file a post-conviction petition. And the court dismissed a post-conviction proceeding in 2005 in which McAlister had filed a petition purportedly raising five issues.

¶3 In his most recent post-conviction petition, McAlister raised seven issues, which the trial court correctly summarized as “‘barred evidence’, perjury, ineffective assistance of counsel, violation of the confrontation clause, misuse of prior bad acts, ineffective assistance of counsel on appeal, and Brady violations.” The court also correctly found that all the claims could have been raised in McAlister’s previous petition; because they were not, the court found them precluded.

¶4 We find no merit to McAlister’s assertion that he could not raise the claims until he received court documents from the Justice Project in the summer of 2005, about six months before he filed his most recent notice of post-conviction relief. The record before us reflects that McAlister served as his own attorney in his first post-conviction proceeding

in 1993 and was provided a copy of the record on appeal and the transcripts of his trial at that time.

¶5 We therefore grant the petition for review but deny relief.

---

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

---

PETER J. ECKERSTROM, Presiding Judge

---

PHILIP G. ESPINOSA, Judge